International Commercial Arbitration in Former Yugoslavia New Developments in Croatia

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This report provides a short information on international commercial arbitration in former Yugoslavia, with special regard to the situation in Croatia. An overview of arbitration law in the Republic of Croatia is provided, as well as an overview of the activities of the Permanent Arbitration Court at the Croatian Chamber of Commerce.

1. Introduction

The dissolution of Yugoslavia and the establishment of several new independent states on its territory has led to a number of legal changes, as well as to a number of new questions. International recognition of the new states (Bosnia and Herzegowina, Croatia, Slovenia and Macedonia) has produced numerous consequences in the field of international commercial arbitration in this part of Central Europe. In this paper, I will, at first, attempt to give a short survey of the current situation concerning international commercial arbitration in Croatia, which could be used as an example of similar problems and expectations in the other republics of former Yugoslavia. Secondly, I will present an arbitral institution in Croatia which has started to perform international commercial arbitration - The Permanent Arbitration Court attached to the Croatian Chamber of Commerce.

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2. The most important legal changes concerning international commercial arbitration in Croatia

Before the dissolution of Yugoslavia, international commercial arbitration was mostly regulated by federal (Yugoslav) acts which were applied in all former Yugoslav republics. The most important provisions of Yugoslav law on arbitration were contained in the Code of Civil Procedure (*Zakon o parničnom postupku* - further quoted as **CCP**), Art. 469-486, as in force from July 1, 1977, and in the Conflict of Laws Act (*Zakon o rješavanju sukoba zakona* - further quoted as **CLA**), Art. 97-101 in force from January 1, 1983.[1] Yugoslav Law on arbitration has been considerably changed by the amendments to the CCP in 1990, not long before Yugoslavia itself ceased to exist.[2]

Croatia declared its independence on June 25, 1991, but the actual secession took place after expiration of a 3-month moratorium and came into force on October 8, 1991. Since that time, Croatia has not recognized any federal Yugoslav legal act. Nevertheless, on the same day, Croatian Parliament published a number of acts on the adoption of Yugoslav laws as the laws of the Republic of Croatia (*Narodne novine*, no. 53 (1991)). According to these acts, CCP and CLA have been adopted as well, but with some changes and the omission of the jurisdiction of all federal institutions.

In spite of the fact that most of the provisions concerning international commercial arbitration remained unchanged, the simple fact that Croatia is a new state, led to some important practical consequences. I will mention just three of them[3]:

1.) Yugoslavia was a member of many international conventions and bilateral agreements concerning international commercial arbitration - including the Geneva Protocol (1923), the Geneva Convention (1927), the New York Convention (1958), the European Convention (1961) and the Washington Convention (1965). The Constitutional Act on Sovereignty and Independence of the Republic of Croatia declared that all international conventions to which Yugoslavia was a party will be applied in Croatia, "if they are not contrary to the Constitution and public policy of the Republic of Croatia, in accordance with the provisions of international law concerning succession of states."[4] After this declaration, which was adopted on June 25, 1991, for some time it was not clear whether the above mentioned conventions applied in Croatia and, if they did, to what extent. However, this issue was settled on July 20, 1993 when the Croatian Government sent a note to UN Secretary General stating that Croatia succeeded to Geneva Protocol (1923), the Geneva Convention (1927), the New York Convention (1958) and the European Convention (1961) and such succession should apply retroactively from the date of Croatian independence - October 8, 1991. Therefore, there is undoubtedly a continuity of application of these arbitral conventions in the territory of the Republic of Croatia.

2.) During the existence of Yugoslavia, arbitration between parties from different republics of Yugoslavia was considered to be domestic. Now, however, a Slovenian enterprise would be considered as a foreign entity in Croatia, and an award made in Slovenia as a foreign arbitral award. Therefore, the number of disputes deemed as "international" has increased, as well as the number of potential international arbitrations. Only disputes between Croatian enterprises are deemed to be domestic now.

3.) In the former Yugoslavia the only institution dealing with international commercial arbitration was the Foreign Trade Arbitration Court (FTAC) in Belgrade. This arbitration court still exists and considers itself to be a "Yugoslav" institution. Even if Croatia were not at war with Serbia, an FTAC award would not be recognized in Croatia now, since Croatia does not recognize Yugoslav acts and considers Yugoslavia as a non-existent state.

These changes led to a series of difficult problems. Just to report a few of them - many Croatian enterprises had made arbitral agreements with foreign enterprises providing the jurisdiction of FTAC; furthermore, there are a number of arbitral agreements between Croatian enterprises and enterprises belonging to other former Yugoslav republics which used to be domestic and are now regarded as international; recognition of arbitral awards made outside Croatia could also be doubted. At the same time, Croatian state courts were overfilled with unsolved cases[5], and the

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1 Translation of these two acts were provided in *International Handbook of Commercial Arbitration*; revised translations of the Croatian law on arbitration are to be found in the annexes to this Yearbook.

2 See Annex III of this paper. The most important changes concern the precise formulation of the range of application of CCP, the form of arbitral agreement (adoption of UNCITRAL-Model Law instead of the New York Convention) and shorter time-limit for the setting aside of an award (no request for the setting aside may be made after the expiry of one year (before: five years) from the final validity date of the award.

3 Fore others, see Dika, M., "Neki problemi izazvani preuzimanjem saveznih gradjanskoprocesnih zakona" (Some Problems Caused by Adoption of Federal Acts Concerning Civil Procedure), in: *Gradjanskopravni aspekti državnopravnog osamostaljenja Hrvatske*, pp. 69-94.

4 Constitutional Act on Sovereignty and Independence of Republic of Croatia, Art. 3 (*Narodne novine*, no. 32 (1991).

5 Just for example, the biggest commercial court in Zagreb had at the beginning of 1992 three weeks no money to pay postal expenses. During that time, no notices were delivered to the parties.

Croatian government tried to present Croatia as an appropriate place for foreign investments. For all those reasons, the need for other means for solving international commercial disputes was greater than ever. All these problems brought initiatives in Croatia to establish an institution which would deal with international commercial arbitration.

3. Permanent Arbitration Court attached to the Croatian Chamber of Commerce

3.1. An Historical Survey

Even if there was no arbitral institution dealing with international commercial arbitration, that doesn't mean that there was no tradition of commercial arbitration in Croatia at all. The first court of arbitration in Zagreb was founded in 1853. It had, for example, in 1926, more than 35 000 cases.[6] The new arbitration court was established in 1965: the Permanent Arbitration Court at the Croatian Chamber of Commerce (PAC). It had jurisdiction only in domestic arbitration, but many of its members were at the same time arbitrators in FTAC cases. It should be mentioned that some leading authorities in the field of international commercial arbitration came from Croatia, so that even the Yugoslav national report in the International Handbook of Commercial Arbitration was written by an author from Croatia - Prof. Dr. Aleksandar Goldštajn from the University of Zagreb. Some Croatian lawyers also have experience as arbitrators in ICC cases, as well as in arbitration proceedings before other international tribunals.

3.2. The PAC and international commercial arbitration

After the declaration of independence, Belgrade was no longer an appropriate venue for international arbitration for Croatian enterprises. Even before it became legally possible, some enterprises which had made arbitral agreements providing the jurisdiction of the FTAC in Belgrade brought their claims before the PAC. In such a manner some disputes between Croatian enterprises and enterprises from the USA, Germany and Hungary waited for PAC's decision as to whether these cases would be accepted. Recognizing the urgent need for a change in this field, the new Statute of Croatian Chamber of Commerce (CCC) which has been in force from November 1991 provided a possibility of the jurisdiction of PCE in the cases of international commercial arbitration. The same provision was accepted in the amendments on the Arbitration Rules of PAC, in force from December 28, 1991.

[6] See Dika, "Stalni izbrani sud pri Privrednoj komori Hrvatske" (Permanent Arbitration Court attached to the CCC), in: *Arbitraža i poduzetništvo*, p. 96.

However, these rules were designed only for domestic arbitration and were not suitable for international arbitration without significant changes. Instead of new amendments, PAC decided to set up entirely new rules which should be designed specifically for international commercial arbitration. These rules - Rules of International Arbitration of PAC or Zagreb Rules - adopted most of their contents from UNCITRAL-Arbitration Rules, but some influence of UNCITRAL-Model Law, ICC-Rules and Vienna Rules can also be noticed. The Zagreb Rules were published on April 29, 1992 and came into force on May 7, 1992.

3.3. The organisation of PAC

The seat and address of PAC is:

Stalno izbrano sudište	*Permanent Arbitration Court*
Hrvatska gospodarska komora	*Croatian Chamber of Commerce*
Rooseveltov trg 2	*Rooseveltov trg 2*
41 000 ZAGREB	*41 000 ZAGREB*
Hrvatska	*Croatia*

Phone	+385 41 61 77 44
	+385 41 61 81 30
Fax	+385 41 61 81 31
Telex	21 524

The PAC is an independent court of arbitration, attached to the CCC. The CCC provides financial resources for PAC's work and appoints the organs of PAC. Otherwise, CCC has no influence on the work of PAC. Organs of PAC are the Presidium (consisting of a president, two vice-presidents and four other members)[7], and the Secretary General. These organs administer arbitration proceedings: statements of claim and other written statements are submitted to the Secretariat of the PAC (see Art. 30 of Zagreb Rules); if parties did not agree otherwise, the President acts as an appointing authority (Art. 12); Secretary General and Presidium control the formal requirements and, to some extent, substantial contents of an award (Art. 43) etc.

[7] Members of the Presidium are mostly noted lawyers and professors of law. At the present, the President of the PAC is Prof. Dr. Siniša Triva, a member of the Croatian Academy of Sciences and professor of Civil Procedure at the University of Zagreb.

The PAC has also a non-binding list of arbitrators, consisting of 40 names of leading Croatian legal, financial and economical experts.[8] The Presidium of PAC is also considering the possibility of including foreign experts on its new list of arbitrators.

3.4. Practice and ambitions of the PAC

It can be expected that several kinds of disputes shall be brought before PAC:

1.) disputes between Croatian enterprises and enterprises form Western and Central Europe and the USA;
   - these disputes often apeared before FTAC and other arbitral institutions; now, the PAC expects that considerable amounts of such disputes shall be brought before PAC - especially when enforcement has to take place in Croatia;

2.) disputes between Croatian enterprises and enterprises from other republics of former Yugoslavia;
   - these disputes used to be solved before PAC as domestic disputes; PAC had a great reputation and experience in such arbitrations;

3.) disputes between enterprises from republics of former Yugoslavia (other than Croatia) as well as between these enterprises and other international enterprises;
   - the PAC could become a neutral institution suitable for international arbitration with post-Yugoslav elements; it has experience in the former-Yugoslav legal system, competent experts and liberal rules of international arbitration;

4.) other disputes between non-Croatian parties;
   - for some time, it can be expected that this kind of arbitral proceeding will not often come before the PAC; but, after formal adoption of international conventions concerning international commercial arbitration, the PAC could easily become an attractive venue for international arbitration as well;

3.4. The costs

The costs of the proceedings are - more or less - within the average consts of similar arbitral institutions (e.g. Vienna Arbitral Centre, ICC etc.), though at their lower boundaries. The advance on costs is calculated according the value in dispute. In spite of the fact that it is difficult to make comparisons, it could be said that costs of the proceedings at the PAC are 20 to 50% lower than in analogous cases administered by the Western counterparts, such as arbitration courts in London, Paris, Zürich or Vienna.

[8] See Triva, S., "Arbitražno rješavanje domaćih i medunarodnih trgovačkih sporova" (Arbitration of Domestic and International Commercial Disputes), in: *Arbitraža i poduzetništvo*, p. 23.

3.5. How to bring a case before PAC?

The PAC started to deal with international commercial arbitration in 1992. In the beginning, there were few arbitral agreements providing PAC's jurisdiction in international commercial disputes. Soon after its foundation, the PAC published its recommended arbitration clauses. Since then, the number of valid arbitral agreements providing for PAC jurisdiction is steadily rising. There are also some cases where party/parties wish to submit the dispute to PAC.CCC although there is no valid clause providing its jurisdiction. According to the new law on arbitration in Croatia and to the new Rules of PAC, it is possible to bring a case before PAC even without any previous arbitral agreement. Croatian CCP (Art. 470, paragraph 3) has recently adopted a provision of Art. 7, par. 2 of the UNCITRAL-Model Law; according to this provision an agreement can be concluded by an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. Because of this, the rules of PAC allow submission of a statement of claim without the submission of a written arbitral agreement. If the other party submits a statement of defence or proceeds with the arbitration without stating his objection to PAC's jurisdiction, under Croatian Law this will be considered a written agreement. Even before current changes, there was a rule that an arbitral agreement may be concluded by consonant statements of the parties, entered into a record at the oral hearing.[9] But, even if the parties could be deemed to accept the jurisdiction of PAC after they begin to discuss the subject matter of the dispute, the Secretariat of the PAC will try to reach an explicit written agreement concerning the jurisdiction of PAC.

4. Conclusion

Although PAC could be viewed as a relatively young institution of international arbitration, it has the chance to develop in a important and attractive arbitral forum in Central and Eastern Europe. While it has its own rules, these rules contain well-known provisions and follow the standards of internationally proved arbitral rules. Moreover, parties can decide that some other rules shall be applied. PAC has a competent staff and experienced arbitrators. Altogether, it could be stated that even now the PAC is able to pass all the tests imposed on international arbitral institutions.[10] In order to improve the quality of its services, the PAC has made

[9] See Art. 12 of Arbitral Rules of FTAC; see also Triva, Goldštajn, *Medjunarodna trgovačka arbitraža* (International Commercial arbitration), p. 250-51.

[10] See Melis, W., Function and Responsibility of Arbitral Institutions, in: *Comparative Law Yearbook of International Business*.

contact with a number of international arbitral institutions. Most recently, PAC has concluded cooperation agreements and established formal bonds with American Arbitration Association (AAA) and Swiss Arbitration Association (ASA); firm links exist also with ICC Court of Arbitation, Milan Chamber of National and International Arbitration and Vienna Arbitral Centre.

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